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HB 5516 AN ACT CONCERNING THE PROVISIONS OF THE STANDARD FIRE INSURANCE POLICY AND COMMERCIAL INSURANCE POLICIES ISSUED BY NONADMITTED INSURERS

Statement of the American Insurance Association

March 8, 2016

The American Insurance Association is a leading national trade association representing approximately 325 major property and casualty insurance companies that collectively underwrite nearly \$117 billion annually in direct property and casualty premiums nationwide. Our members range in size from small companies to the largest insurers with global operations and include insurance companies that write coverage on a nonadmitted basis. We must respectfully oppose H 5516, which would make significant changes to both the insurance appraisal process as well restrict the use of coinsurance clauses in commercial insurance policies.

First, H 5516 significantly alters the insurance appraisal process by expanding it to incorporate issues concerning scope of loss. Currently, the insurance appraisal process is generally limited to disputes about the value of the loss. The appraisal process does not adjudicate coverage or other legal questions, including questions surrounding the scope of loss as is contemplated in H 5516.

Further, it is important to note that there would certainly be inherent limitations in the use of the appraisal process to resolve coverage disputes. Appraisers are selected for their ability to make pricing determinations, not to make a legal determination relative to the scope of the loss. This legislation would blur the lines between the appraisal and arbitration process, which may negatively impact the rights of the parties to the insurance contract. The current and clear procedural boundaries protect the legal and contractual rights of the parties. If the insured or insurer is compelled to surrender its right to a judicial interpretation of coverage questions under the insurance contract through the appraisal process, there could very well be cost implications as a result.

Additionally, H 5516 significantly restricts the use of coinsurance clauses in commercial real property policies issued by non-admitted insurers. The bill would modify section 38a-308 of the Connecticut statutes to require that certain coinsurance clauses in commercial real property policies from non-admitted insurers use fair market value—specifically those policies that define depreciation differently than as set forth in section 38a-307. There are also questions

surrounding the reference to fair market value and what this means specifically. Does this refer to the valuation of the property at the time of the loss, or some other factor?

Overall, H 5516 presents several significant problems for nonadmitted insurers. Most significantly, the bill undermines “rate and form freedom” that has been the hallmark of the surplus lines or non-admitted business. It is that very freedom that has permitted this marketplace to provide coverage to customers on a voluntary basis for risks not covered in the admitted market. Moreover, it should be noted that conditioning the use of a coinsurance clause on specific factors including the use of fair market value or a particular definition for “depreciation” also belies the rate and form freedom. We respectfully submit that overreaching and undermining this freedom is not necessary, especially in the commercial context.

Thank you for the opportunity to provide comments and share our concerns on this issue. For the foregoing reasons, AIA urges the Committee to reject House Bill 5516.

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